

STATE OF MICHIGAN  
IN THE SUPREME COURT

SHARDA GARG,

Plaintiff-Appellee,

V

MACOMB COUNTY COMMUNITY  
MENTAL HEALTH SERVICES, a  
governmental agency of MACOMB  
COUNTY,

Defendant-Appellant.

Supreme Court  
No: 121361

Court of Appeals  
No.: 223829

Macomb County Circuit Court  
No.: 95-3319 CK

**SUPPLEMENTAL AUTHORITY IN SUPPORT OF  
APPLICATION FOR LEAVE TO APPEAL BY  
MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES**

KITCH DRUTCHAS WAGNER  
DENARDIS & VALITUTTI

By: SUSAN HEALY ZITTERMAN (P33392)  
KAREN B. BERKERY (P38698)  
Attorneys for Defendant  
One Woodward Avenue, 10<sup>th</sup> Floor  
Detroit, Michigan 48226  
(313) 965-7905

**FILED**

JUL 31 2003

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

**SUPPLEMENTAL AUTHORITY IN SUPPORT OF  
APPLICATION FOR LEAVE TO APPEAL**

NOW COMES Defendant Macomb County Community Mental Health Services, by and through its attorneys, KITCH DRUTCHAS WAGNER DENARDIS & VALITUTTI, and in further support of its application for leave to appeal relies upon this Court's decision in West v General Motors Corp., \_\_\_ Mich \_\_\_ (Docket No 121003, filed July 22, 2003).

The Court's analysis in concluding that plaintiff in West failed to come forth with evidence supporting the causation element of his whistle-blower claim applies directly to the issues raised by defendant in its application for leave to appeal in this matter. As with both of Sharda Garg's retaliation claims in this matter, there "is nothing more than pure conjecture and speculation to link plaintiff's [opposition to sexual harassment by slugging Mr. Habkirk in 1981, or pursuing a grievance based on, inter alia, national origin discrimination in 1987] to any subsequent adverse employment action." West, slip opinion, p 12. Here, as in West, to "prevail, plaintiff had to show that [her] employer took adverse employment action because of plaintiff's protected activity, but plaintiff has merely shown that [her] employer [failed to promote or harassed her] after the protected activity occurred." West, slip opinion at p 9.

Further, here as in West, the evidence does not show that either of plaintiff's supervisors with respect to whom plaintiff engaged in protected activity, Mr. Habkirk or Mr. Cathcart, viewed either the slugging incident or the national origin discrimination grievance "as a matter of any consequence." West, slip opinion at p 9.

Here as in West, plaintiff clearly failed to establish the required causal connection between her alleged protected activity and the adverse employment actions of which

she complained--plaintiff Sharda Garg failed to establish that she was not promoted, or was working under what she perceived to be less than ideal conditions because of retaliation for her opposition to sexual harassment or national origin discrimination.

WHEREFORE defendant Macomb County Community Mental Health Services, respectfully requests that this Honorable Court peremptorily reverse the judgments below, or grant leave to appeal, and:


Direct the entry of judgment of no cause of action in favor of defendant.

In the alternative, and if the Court determines that there was sufficient evidence to support one of the two retaliation theories, defendant seeks a new trial as to that theory only. Defendant further requests that the Court direct that summary dismissal be granted as to claims based on acts more than three years before this suit was filed, as barred by the statute of limitations.

Respectfully submitted,

KITCH DRUTCHAS WAGNER  
DENARDIS & VALITUTTI

By:

  
SUSAN HEALY ZITTERMAN (P33392)  
KAREN B. BERKERY (P38698)  
Attorneys For Defendant  
One Woodward Avenue, 10th Floor  
Detroit, Michigan 48226-3499  
(313) 965-7905

DATED: July 31, 2003

KITCH DRUTCHAS  
WAGNER DENARDIS  
& VALITUTTI  
ATTORNEYS AND COUNSELORS  
ONE WOODWARD AVENUE  
TENTH FLOOR  
DETROIT, MICHIGAN  
48226-3499

(313) 965-7900

DET02\897978\1

STATE OF MICHIGAN  
IN THE SUPREME COURT

SHARDA GARG,

Plaintiff-Appellee,

V

MACOMB COUNTY COMMUNITY  
MENTAL HEALTH SERVICES, a  
governmental agency of MACOMB  
COUNTY,

Defendant-Appellant.

Supreme Court  
No:

Court of Appeals  
No.: 223829

Macomb County Circuit Court  
No.: 95-3319 CK

**AFFIDAVIT OF SERVICE**

STATE OF MICHIGAN )  
                                  )SS  
COUNTY OF WAYNE )

LYNN LASHER, being first duly sworn, deposes and says that she is employed by the law firm of KITCH DRUTCHAS WAGNER DENARDIS & VALITUTTI, and that on the 31st of July, 2003, she did serve upon:

MONICA FARRIS LINKNER (P28147)  
Attorney for Plaintiff  
2000 Town Center  
Suite 900  
Southfield, MI 488075  
(248) 355-0300

ALLYN CAROL RAVITZ (P19256)  
Attorney for Plaintiff  
PO Box 948  
Wolverine Lake, MI 48390-0948  
(248) 960-0800

the following documents: **SUPPLEMENTAL AUTHORITY IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL BY MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES and AFFIDAVIT OF SERVICE** by having same enclosed in an envelope with postage thereon fully prepaid and deposited in a United States postal receptacle.

Further affiant saith not.

  
LYNN LASHER

Subscribed and sworn to before me  
this 31ST day of July, 2003

KITCH DRUTCHAS  
WAGNER DENARDIS  
& VALITUTTI  
ATTORNEYS AND COUNSELORS  
ONE WOODWARD AVENUE  
TENTH FLOOR  
DETROIT, MICHIGAN  
48226-3499  
(313) 965-7900

  
NOTARY PUBLIC, WAYNE COUNTY, MI  
MY COMMISSION EXPIRES: 12/17/04

DET02\897978\1